

West Virginia's Revised Venue Statute – W.Va. Code § 56-1-1

Potentially significant changes to West Virginia's venue statute—W.Va. Code § 56-1-1—went into effect on July 1, 2018, which greatly restrict the ability of non-resident plaintiffs to pursue claims in the state. This “new” venue statute is designed to curb “forum shopping” and requires a non-resident plaintiff to establish that “all or a substantial part of the acts or omissions giving rise to the claims asserted” took place there. Amended W. Va. Code § 56-1-1 provides:

For all civil actions filed on or after July 1, 2018, a nonresident of the state may not bring an action in a court of this state unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in this state: *Provided*, that unless barred by the statute of limitations or otherwise time barred in the state where the action arose, a nonresident of this state may file an action in state court in this state if the nonresident cannot obtain jurisdiction in either federal or state court against the defendant in the state where the action arose. A nonresident bringing such an action in this state shall be required to establish, by filing an affidavit with the complaint for consideration by the court, that the action cannot be maintained in the state where the action arose due to lack of any legal basis to obtain personal jurisdiction over the defendant: *Provided, however*, that the provisions of this subsection do not apply to civil actions filed against West Virginia citizens, residents, corporations, or other corporate entities.

In a civil action where more than one plaintiff is joined, each plaintiff must independently establish proper venue. A person may not intervene or join in a pending civil action as a plaintiff unless the person independently establishes proper venue. If venue is not proper as to any such nonresident plaintiff in any court of this state, the court shall dismiss the claims of such plaintiff without prejudice to refile in a court in any other state or jurisdiction. When venue is proper as to one defendant, it is also proper as to any other defendant with respect to all actions arising out of the same transaction or occurrence.

Unlike West Virginia's forum *non conveniens* statute—W.Va. Code § 56-1-1a—that employs a multi-factor test and accords a trial court substantial deference when deciding whether to retain jurisdiction over a matter, revised § 56-1-1 is clear in its directive: claims brought by non-resident plaintiffs must bear more than a minimal connection to the state.

What is considered “a substantial part,” however, is not defined; this may engender litigation as trial courts wrangle with this assessment. This is particularly true when claims implicate multiple states, such as those arising in mass tort litigation.

Moreover, a plaintiff may seek to add a resident defendant to his complaint in an attempt to avoid revised § 56-1-1's reach. Efforts to circumvent this statute could complicate a lawsuit at the outset as the parties argue whether a resident defendant has been properly named.

The good news is that this revision to the law continues the overall trend of tort reform in the Mountain State. Moving forward, non-resident defendants should incorporate this statute into their arsenal when challenging claims brought by non-resident plaintiffs in West Virginia.



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Kelly Calder Mowen defends high-risk litigation involving catastrophic injuries and wrongful death with an emphasis on product liability, transportation, toxic tort and environmental matters. Kelly has represented automotive manufacturers, trucking companies, railroads and insurers in a variety of claims ranging from wrongful death and personal injury to insurance bad faith. Kelly has substantial experience managing complex defenses and actively negotiating claims for product manufacturers and premises owners related to mass tort litigation in West Virginia's state and federal courts.

Kelly is a graduate of the National Trial Advocacy College at the University of Virginia School Of Law. She is admitted in Virginia and West Virginia, as well as the Southern District and Northern District courts of West Virginia. Prior to joining Litchfield Cavo, Kelly gained valuable experience as an associate with national law firms located in Charleston and Huntington, West Virginia.

Kelly is Director of Events for the West Virginia Chapter of the Claims and Litigation Management Alliance. She is also involved with the Defense Research Institute (DRI), Defense Trial Counsel of West Virginia and West Virginia Women Attorneys.

Education

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